

STATEMENT OF FACTS

Your affiant, Marc Esposito, is a Special Agent for the Federal Bureau of Investigation (FBI) assigned to Washington Field Office's Joint Terrorism Task Force (JTTF) tasked with investigating criminal activity pertaining to international and domestic terrorism. Currently, I am tasked with investigating criminal activity in and around the Capitol grounds on January 6, 2021. As a Special Agent, I am authorized by law or by a Government agency to engage in or supervise the prevention, detention, investigation, or prosecution of a violation of Federal criminal laws.

The U.S. Capitol is secured 24 hours a day by U.S. Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification were allowed access inside the U.S. Capitol. On January 6, 2021, the exterior plaza of the U.S. Capitol was also closed to members of the public.

On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol, which is located at First Street, SE, in Washington, D.C. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting in separate chambers of the United States Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on November 3, 2020. The joint session began at approximately 1:00 PM EST. Shortly thereafter, by approximately 1:30 PM EST, the House and Senate adjourned to separate chambers to resolve a particular objection. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

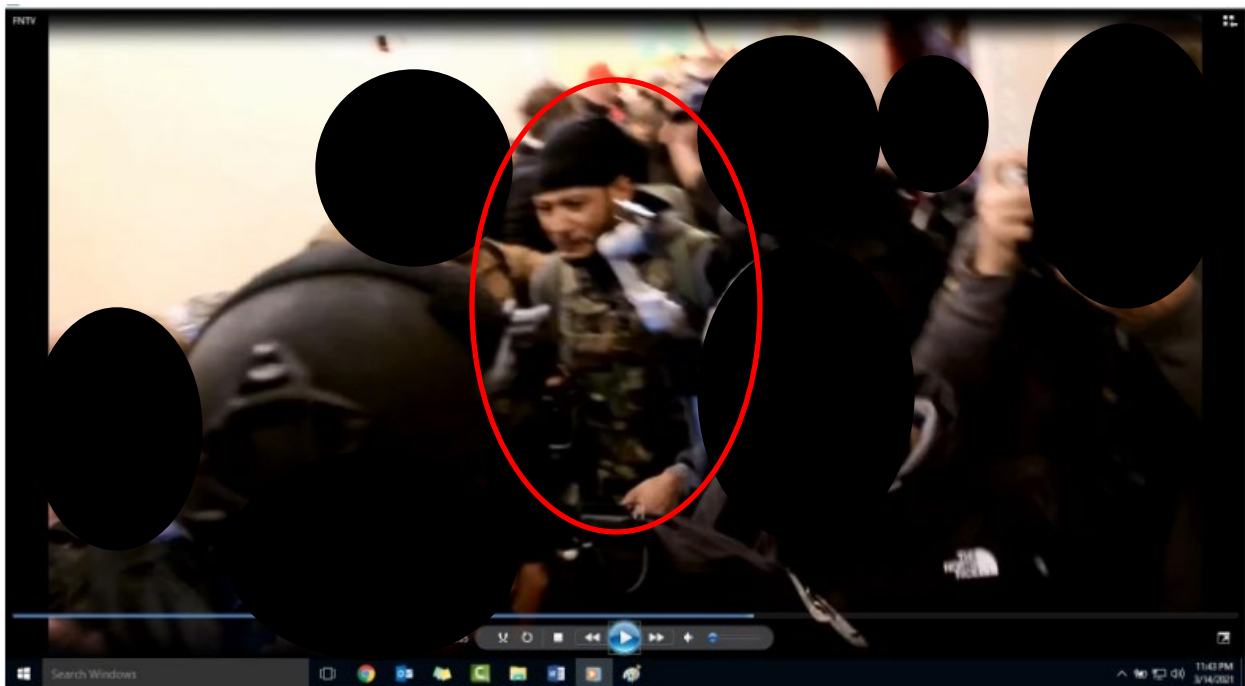
As the proceedings continued in both the House and the Senate, and with Vice President Mike Pence present and presiding over the Senate, a large crowd gathered outside the U.S. Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the U.S. Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

At such time, the certification proceedings were still underway and the exterior doors and windows of the U.S. Capitol were locked or otherwise secured. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, shortly around 2:00 PM EST, individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of the U.S. Capitol Police, as others in the crowd encouraged and assisted those acts.

Shortly thereafter, at approximately 2:20 PM EST members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Mike Pence, were instructed to—and did—evacuate the chambers. Accordingly, the joint session of the United States Congress was effectively suspended until shortly after 8:00 PM EST. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the sessions resumed.

During national news coverage of the aforementioned events, video footage which appeared to be captured on mobile devices of persons present on the scene depicted evidence of violations of local and federal law, including scores of individuals inside the U.S. Capitol building without authority to be there.

On or around March 17, 2021, the FBI focused on identifying individuals in the vicinity of the Speaker's Lobby within the US Capitol Building on January 6, 2021. The FBI reviewed photographs and videos posted publicly by news organizations and/or on social media as well as videos from U.S. Capitol Police Closed Circuit Television (CCTV). One of the individuals, as shown in the below screenshot from a FreedomNewsTV (FNTV) video posted on January 6, 2021, is a black male with facial hair, wearing a dark colored head covering, gray colored long sleeve outer garment, camouflage-pattern backpack on his chest, and an OD Green duffle bag.



On March 22, 2021 the FBI received information from an organization called “Sedition Hunters” identifying ULIYAHU HAYAH (“Hayah”) through images and videos as a participant of the Capitol Riot. The organization provided associated photos of Hayah on January 6, 2021 in Washington, DC to include the collage seen below.

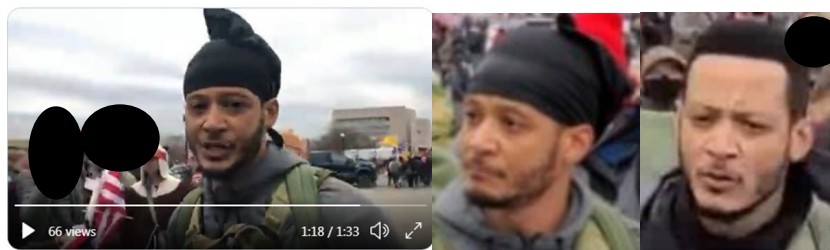


On a publicly available video from the twitter account associated with Epoch Times reporter Joshua Philipp, Hayah documented his actions inside of the US Capitol Building to a group outside of the Capitol Building. Hayah recounted that “[w]e pushed all the way through. They couldn’t stop us.” Hayah further said “some of those officers in there are decent officers. They did not want a physical confrontation but there are some officers in there that are evil [...] they shot a woman from another side of the glass – we didn’t even breach that side yet. When asked for his name, Hayah said “HAYAH. H-A-Y-A-H.” Hayah was wearing a black head covering, gray sweatshirt, camouflage-pattern backpack on his chest, and an OD-Green duffle bag. When asked if Hayah went inside the Capitol Building, Hayah responded “Yes, maced and everything. They maced but I had a gas mask on.”



Public and law enforcement records identified Hayah as a resident of Virginia with phone number (XXX) XXX-9490, though the investigation has indicated that Hayah now lives in Maryland. Your affiant retrieved a copy of Hayah's Virginia Department of Motor Vehicles driver's license. Hayah's photograph from his Virginia driver's license closely resembles the individual in the photographs above.

Law enforcement records also indicated that Hayah is a parolee supervised by a parole officer from the Virginia Department of Corrections in Fairfax County, Virginia following a criminal conviction in the Circuit Court of Maryland for Prince George's County. Hayah's parole officer confirmed Hayah's phone number as (XXX) XXX-9490, and your affiant has observed Hayah's parole officer communicate through text messages and talk with Hayah utilizing the (XXX) XXX-9490 telephone number. The parole officer also reviewed the below photographs when asked to identify Hayah. The parole officer explained that, at the time of viewing the photographs, the officer has not seen Hayah in about one year due to COVID-19; but the officer was 75% certain the captioned individual in the below photograph was Hayah.



According to records obtained through a search warrant which was served on Verizon, on January 6, 2021, in and around the time of the incident, the cellphone associated with (XXX)

XXX-9490 was identified as having utilized a cell site consistent with providing service to a geographic area that includes the interior of the United States Capitol building.

A review of CCTV indicated that Hayah entered the Capitol Building through the Senate Wing at approximately 2:14 PM EST. Hayah was identifiable based on wearing the same camouflage-pattern backpack on his chest, an OD-Green duffle bag, black head covering, and gray colored long sleeve garment as observed in several other photos of Hayah on January 6, 2021. As shown in the CCTV still photo below, the individual carrying an American Flag and wearing a gas mask is consistent with the clothing Hayah wore that day and his admission to wearing a gas mask when entering the US Capitol Building.



Further review of CCTV indicated that after entering the Capitol Building through the Senate Wing Door, Hayah walked toward and then entered the Crypt. At approximately 2:22 PM, Hayah removed the US flag from the flagpole he carried and placed the flagpole on the floor of the Crypt. As shown in the below screen shot from CCTV, at approximately 2:25 PM, Hayah was on the front line of rioters walking against a line of US Capitol Police in the Crypt. While

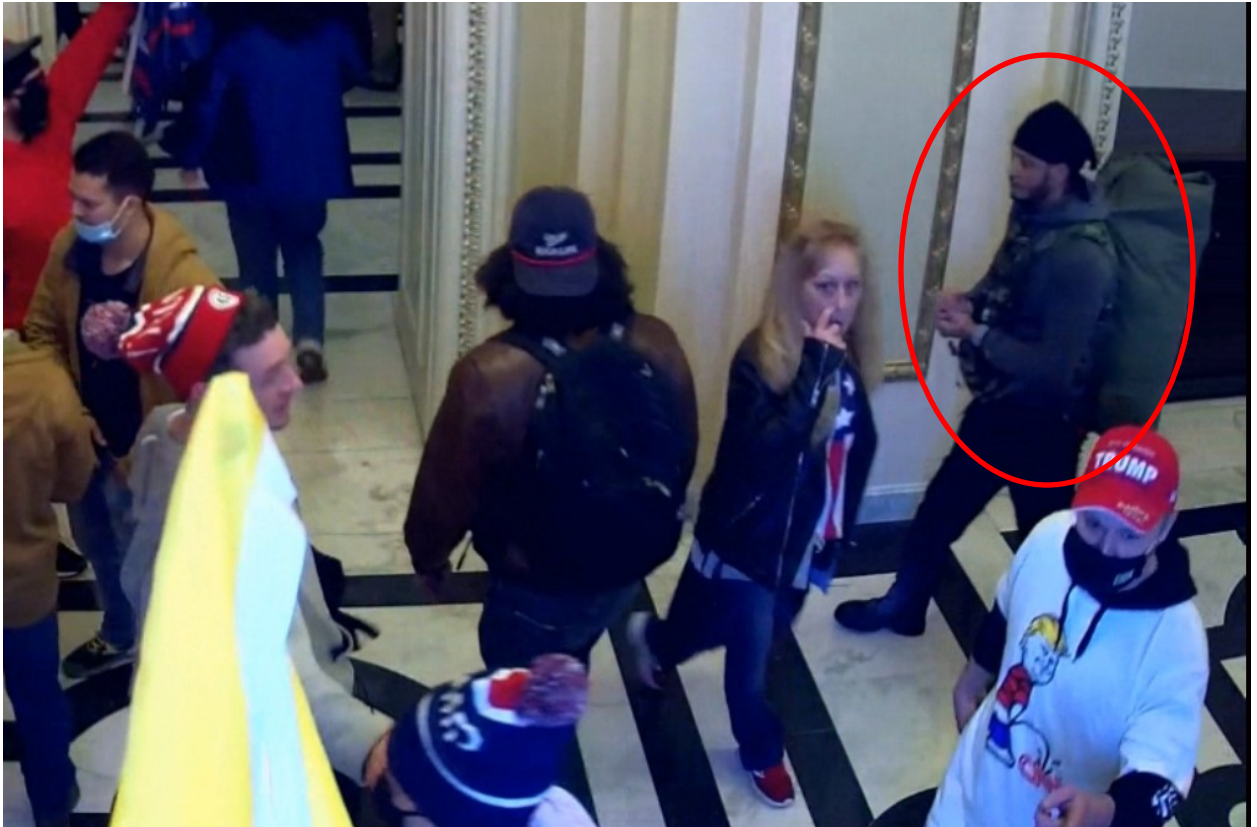
the crowd of rioters clearly overwhelmed law enforcement, HAYAH did not engage in any physical assaults against law enforcement at this time.



As shown through CCTV and depicted in the below screen shot, at 2:29 PM Hayah walked into Statuary Hall and passed through the Statuary Hall Connector towards the House of Representatives Chamber.



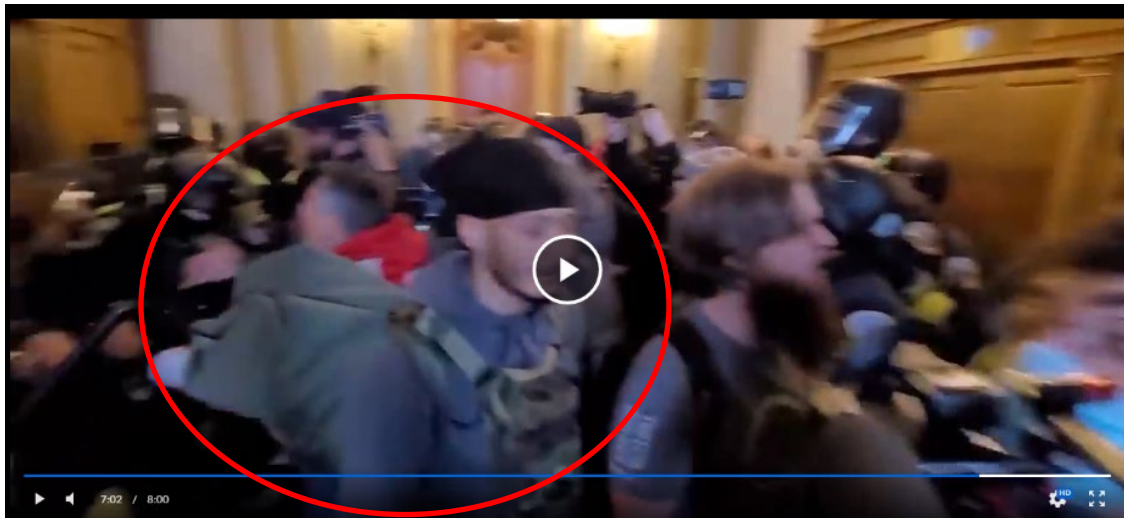
Later, as shown by the CCTV screen shot, at approximately 2:43 PM, Hayah then passed by room H208 towards the Speaker's Lobby.



As shown through open-source videos posted on social media, including video by John Sullivan using the moniker "JaydenX," Hayah was in the vicinity of the Speaker's Lobby moments after Ashli Babbitt was shot.



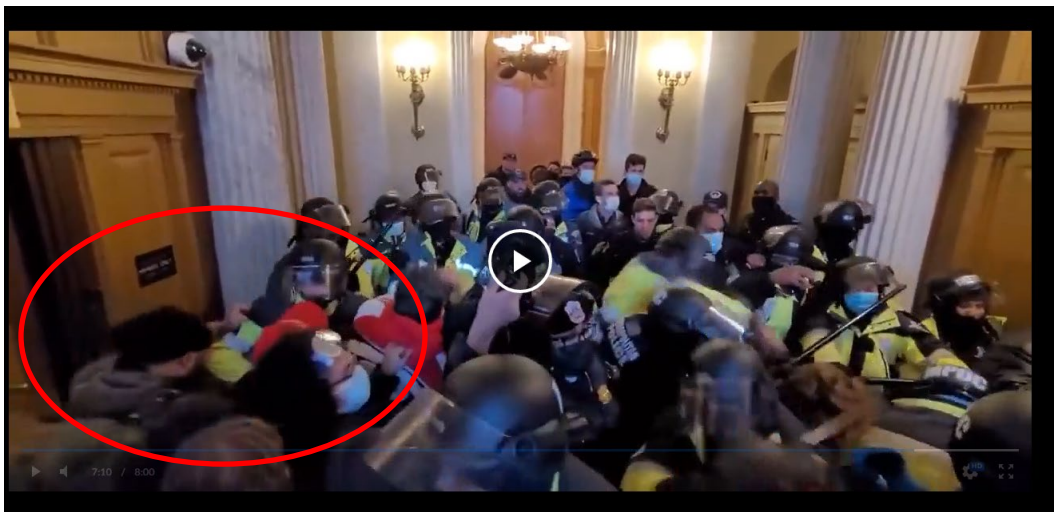
As shown in John Sullivan's video, following the shooting of Ashli Babbitt, law enforcement escorted out a group of rioters from the Speaker's lobby area to an elevator lobby and outside the Capitol. At this time, Hayah was wearing a black head covering, gray sweatshirt, camouflage-pattern backpack on his chest, and an OD-Green duffle bag. While law enforcement escorted the rioters out of the building, a physical confrontation started between some members of law enforcement and other rioters. Hayah joined the confrontation by putting his hands on Metropolitan Police Department Officer R.D. and pushing Officer R.D. back approximately ten feet into the crowd where the confrontation was occurring. The confrontation ended soon thereafter and law enforcement continued escorting out the rioters.



As shown on the JaydenX video Hayah walking out of the U.S. Capitol with other rioters.



Hayah grabs Officer R.D. as a physical confrontation begins between rioters and law enforcement.



Hayah pushes back Officer R.D. approximately 10 feet.

In an interview, Officer R.D. explained that he did not recognize Hayah due to the large number of people in the crowd and chaotic scene at the Capitol; nonetheless, Hayah's actions as shown in the Jayden X video are also corroborated by other video platforms. As indicated by the below screen shots, the Capitol Police CCTV and Officer R.D.'s Body Worn Camera show the same confrontation from a different angle. Moreover, CCTV indicates Hayah was in the Upper House entryway at approximately 2:55 PM when he pushed Officer R.D and he then exited the U.S. Capitol at approximately 2:57 PM.



USCP CCTV shows Hayah pushing Officer R.D.





Officer R.D.'s BWC shows Hayah pushing him.

Based on the foregoing, your affiant submits that there is probable cause to believe that Hayah violated 18 U.S.C. § 1752(a)(1), (2), and (4) which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do; and (2) knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engage in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions; (4) knowingly engages in any act of physical violence against any person or property in any restricted building or grounds; or attempts or conspires to do so. For purposes of Section 1752 of Title 18, a “restricted building” includes a posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service, including the Vice President, is or will be temporarily visiting; or any building or grounds so restricted in conjunction with an event designated as a special event of national significance.

Your affiant submits there is also probable cause to believe that Hayah violated 40 U.S.C. § 5104(e)(2)(D), (F) and (G), which makes it a crime to willfully and knowingly (D) utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress, or the orderly conduct in that building of a hearing before, or any deliberations of, a committee of Congress or either House of Congress; (F) engage in an act of physical violence in the Grounds or any of the Capitol Buildings; and (G) parade, demonstrate, or picket in any of the Capitol Buildings.

As well, there is also probable cause to believe that Hayah violated 18 U.S.C. § 111(a)(1), which makes it a crime to forcibly assault, resist, oppose, impede, intimidate, or interfere with a person designated in 18 U.S.C. § 1114, which includes certain federal officers or employees or those assisting them, where such acts involve physical contact with the victim of that assault, while the officer or employee is engaged in or on account of the performance of official duties.

Finally, your affiant submits there is probable cause to believe that Hayah violated 18 U.S.C. § 231(a)(3), which makes it unlawful to commit or attempt to commit any act to obstruct,

impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function. For purposes of Section 231 of Title 18, a federally protected function means any function, operation, or action carried out, under the laws of the United States, by any department, agency, or instrumentality of the United States or by an officer or employee thereof. This includes the Joint Session of Congress where the Senate and House count Electoral College votes.

A handwritten signature in dark ink, reading "Marc A Esposito", is positioned above a horizontal line.

Marc Esposito
Special Agent
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone, this 25th day of August 2021.

G. MICHAEL HARVEY
U.S. MAGISTRATE JUDGE